THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12162 of 1996

Dated:28.11.2006

Between
M.Daniel Babu

.....Petitioner

and

1.The Chief Engineer, AP State
Electricity Board, Nellore Zone,
Nellore and others.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12162 of 1996

ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to the proceedings No.SE.O.TPT. Lr.No.PO.ADM.U.1/D.No.1292/95 dated 25.1.1995 on the file of the 2nd respondent-Superintending Engineer (Operations) A.P. State Electricity Board, Tirupati (Now called as SPDC) as confirmed by the appellate authority 1st respondent-Chief Engineer *vide* proceedings No. Memo No.CEE.NZ.NLR.PO.A/F.36/D.No.6405/95 dated 27.9.1995 and to quash the same as arbitrary and illegal.

It appears that the petitioner was appointed as a Bill Collector in the respondent-Board in 1980. While so, he was placed under suspension on

18.7.1992 on certain charges of mis-appropriation of funds of the Board. After conducting a detailed enquiry into the matter, he was removed from service on 25.1.1995. Aggrieved by the same, the petitioner carried the matter in appeal before the 1st respondent-appellate authority, who in turn, confirmed the order of dismissal from service while dismissing the appeal. Aggrieved thereby, the present writ petition is filed.

Before going into the merits, it may be necessary to notice the charges framed against the petitioner, which read as under:

> Charge No.1: Sri M.Daniel Babu, LDC (RC) under suspension ERO/Tirupati is alleged to have participated actively in the alleged misappropriation of Rs.1000/- by his colleague Sri K.Tirumani, LDC (RC) who altered the original entries incorporated by Sri Daniel Babu against the SC No.10925 in the BCRC No.024938 to facilitate the alleged misappropriation.
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> Charge No.II: The delinquent is alleged to have collected a surcharge of Rs.86-00 in respect of Sc.No.10925 of Tirupati while the slip issued by the concerned clerk indicates it as Rs.186/-

Charge No.III: The delinquent is alleged to have left his counter on 25.6.92 without rendering account of the cash collected by him on that day.

The petitioner has submitted his explanation which reads as under:

"At the outset, I humbly submit that though unconnected to any of the allegations, it was very unfortunate for me and feel utterly, humiliated to have been made to face the suspension and enquiry.

I humbly submit the following facts in reply to charges to the kind enquiry officer for favour of perusal and to exonerate me from the charges, duly recommending for early reinstatement, please.

Reply to charge No.1:

I deny that I have actively participated in the alleged misappropriation of Rs.1000/- by my colleague Sri K.T.Mani. I admit that I have operated BCRC Nos.024938/-, 024939 and 024940 dated 25.6.1992. I have cast that totals in BCRC No.024938 and 024939 personally. I have issued PR Nos.59908 to 59960 on 25.6.1992, the total of which was cast by me in the PR Book and an amount of Rs.28,475-45 was handed over to the Accountant/Cash on the same day for the BCRCs 024938 to 024940. It was at this stage that I developed ill health and handed over the BCRCs to Sri KT Mani for continuing the totals in BCRCs No.024940 and incorporation in his

PCB. The ill health was beyond my control as I was not able to continue work due to diarrhaea.

I have handed over the cash collected by me based on the total of the total PRs. issued by me duly furnishing the denomination wise break up for Rs.28,475.45 which was ticked and attested by RC/Cash on behalf of Accountant/Cash. The slip containing the denomination breakup was taken over from me by the Asst. Accounts Officer, Electricity Revenue Office, Tirupati which was not transmitted to the appropriate authority for the best reasons not known to me, this being the basic record to prove my innocence may be obtained now by the Enquiry Officer, if felt necessary.

I have to impress upon the procedure obtaining in Elecy. Revenue Office, Tirupati with regard to cash collections and remittances of 'B' counter of Elcy. Revenue Office, Tirupati. There are 2 Nos. Revenue Cashiers who collect cash and remit after entering the BCRCs in their PCB's. At times when consumers are more causing distribution of work of collection to more than the existing 2 Nos. Revenue Cashiers. It is practice to entrust the work to mere RC's suitable. The additional Revenue Cashiers Collect CC. Charges and remit the amount to Accountant/Cash. The relevant BCRCs given to the either of the 2 Nos. Revenue cashers for incorporation in the PCB. It is with this practice

in vogue that BCRCs are given to Sri KT Mani, Revenue Cashier for incorporation in the PCB after carrying out the totals in the BCRCs No.024940.

My handing over the total cash collected by me in full of Rs.28,475.45 as per P.R Book is basic evidence and the denomination slip is the secondary evidence in my defence.

As I have handed over the total cash collected by me on 25.6.1992 in full, there is no intention for me to actively participate in the misappropriation of Rs.1,000/- as alleged.

In view the same, the charge may please be dropped.

Reply to Charge No.II:

I deny the charge. The consumer of SC No.10925 has come to remit C.C. Charges. As he came to the counter, he picked up an issue that he was charged heavily on surcharge. He alleged that he received the adj. bill for Rs.2664.00 only 1 ½ months back. He neither paid the amount as per slip nor allowed other consumers to pass on to the counter. It was hindrance to the collections by me. I took his slip and checked up his slip as to the surcharge. The slip did not contain any RC Fees specified therein. As per the instructions of the then Assistant Account Officer, Electricity Revenue Office, Tirupati RC Fees was being collected in respect of arrears relating to more than a month. Hence, I could come to the conclusion that the surcharge amount related to 1 ½ months period only.

The surcharge for Rs.2664-00 for 1 ½ months period only. The surcharge for Rs.2664.00 for 1 ½ months worked out to Rs.80-00 and with the surcharge for current month. It worked out to Rs.86-00 only. It is with this actual correct calculation that the surcharge for Rs.86-00 was accepted by me. The CC charges was collected correctly. It was done to continue the collection work smoothly avoiding a scene before the counter by that consumer.

The disputes raised in the statement under Ex.6 and E.7 of Asst. Accounts Officers letter to Superintending Engineer, Opn, Tirupati are not relevant to this case since they have made the corrections in the PR.

In other words, I have issued PR for the actual amount of collection and thus there is no motive attributable to correction of surcharge by me, as alleged.

In view of the above submission, I request that the charge may please be dropped.

Reply to charge III:

I deny the charge. As I have already stated in charge I, I have cast the total in BCRC No.024938 and 024939. It is not correct that I have not totaled the BCRCs as alleged. I have operated the BCRC No.024940 also. I have handed over the total of PR Book. I have developed ill health due to loose motions that I left the counter duly handing over the BCRCs to Sri K T Mani, for incorporation in his PCR., after carrying out

having been remitted in full correctly and after totaling the BCRC No.024938 and 024939. I left with a request to Sri K.Tirumani to carryout the total in BCRC No.024940, I left the counter due to illness. I have thereafter authenticated the BCRC No.024940 with the belief that totals are correctly carried out by him in view of the circumstances explained, the authentication was necessary. I did not have any intention of indulging in willful malfeasance. It is therefore contended that I have observed the procedures when I left the counter. The charge may please be dropped."

Insofar as charge No.1 is concerned, it does not indicate that the petitioner has misappropriated the funds. It is alleged that the petitioner has actively participated in the alleged misappropriation of Rs.1,000/- by his colleague K.Tirumani. It is not denied by the disciplinary authority that petitioner has handed over a cash of Rs.28,475.45/- collected by him to Sri Ameer Basha, LDC (RC) Assistant to Junior Accounts Officer/Cash. He also handed over the BCRCs to his colleague K.Tirumani, LDC (RC) to complete the casting and as he was not feeling well, he left the counter after obtaining permission from the Junior Accounts

Officer/Cash. K.Tirumani gave a statement to Assistant Accounts Officer and also during the enquiry he stated that he had committed misappropriation of Rs.1000/- pertaining to the sanction of the petitioner against S.C.No.10925 Tirupati in BCRC No.024938 dated 25.6.1992. He gave various reasons for committing such misappropriation. Thus, the said Tirumani has taken the responsibility of the entire misappropriation committed from the account of the petitioner.

The only complaint of the Board is that on the next day the petitioner simply put his signature against this particular SC No.10925 in BCRC No.024938 to facilitate the misappropriation by the said Tirumani, who corrected the bill from Rs.2960/- to Rs.1960/-. It seems, the case of the Board is that the petitioner could have taken an objection, instead of doing that, he connived with Tirumani. According to the petitioner, he has sanctioned the same without any verification. Therefore, he cannot be made guilty. However, the Board made him

guilty of the charge.

Insofar as charge No. II is concerned, according to the Board the petitioner collected surcharge of Rs. 86/- only whereas the surcharge required to be collected was Rs.186/-. Except this, even in the findings recorded by the Board there is no reason as to why the petitioner ought to have collected Rs.186/-.

Insofar as charge No.III is concerned, the petitioner obtained permission and went away since he was not feeling well on that day. The very fact that the petitioner has handed over the collections up to that time to the Assistant Accounts Officer indicates that the petitioner has obtained permission and went away, asking the said Tirumani to complete the casting. While completing the casting, the said Tirumani took advantage of the situation by correcting the bill amount of Rs.2960/- as 1960/-.

From all this, it can be seen that, may be, the petitioner has given scope for Tirumani to commit some mistake, but absolutely there is no evidence

to show that the petitioner has actively participated with Tirumani in committing the misappropriation. Even assuming that charge Nos.II and III are proved, they are very trivial in its nature and the punishment of dismissal from service imposed by the 2nd respondent as confirmed by the 1st respondent is arbitrary and illegal.

However, in a case of this nature, it is necessary to send the matter back for reconsideration as to the proportionality of the punishment. But, since it is more than 11 years, it may not serve any purpose and it is better to give a quietus at this stage itself.

In view of the above, impugned order passed by the 2nd respondent as confirmed by the 1st respondent is set aside and the respondents are directed to reinstate the petitioner into service with continuity of service, with all attendant benefits but without any back wages.

Writ petition is allowed accordingly. No costs.

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28-11-2006

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